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FEB 23 1927

WM. R. STANLEY  
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 258

POWER MANUFACTURING COMPANY, *Plaintiff in Error,*

v.

HARVEY BAUTNER, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF  
ARKANSAS

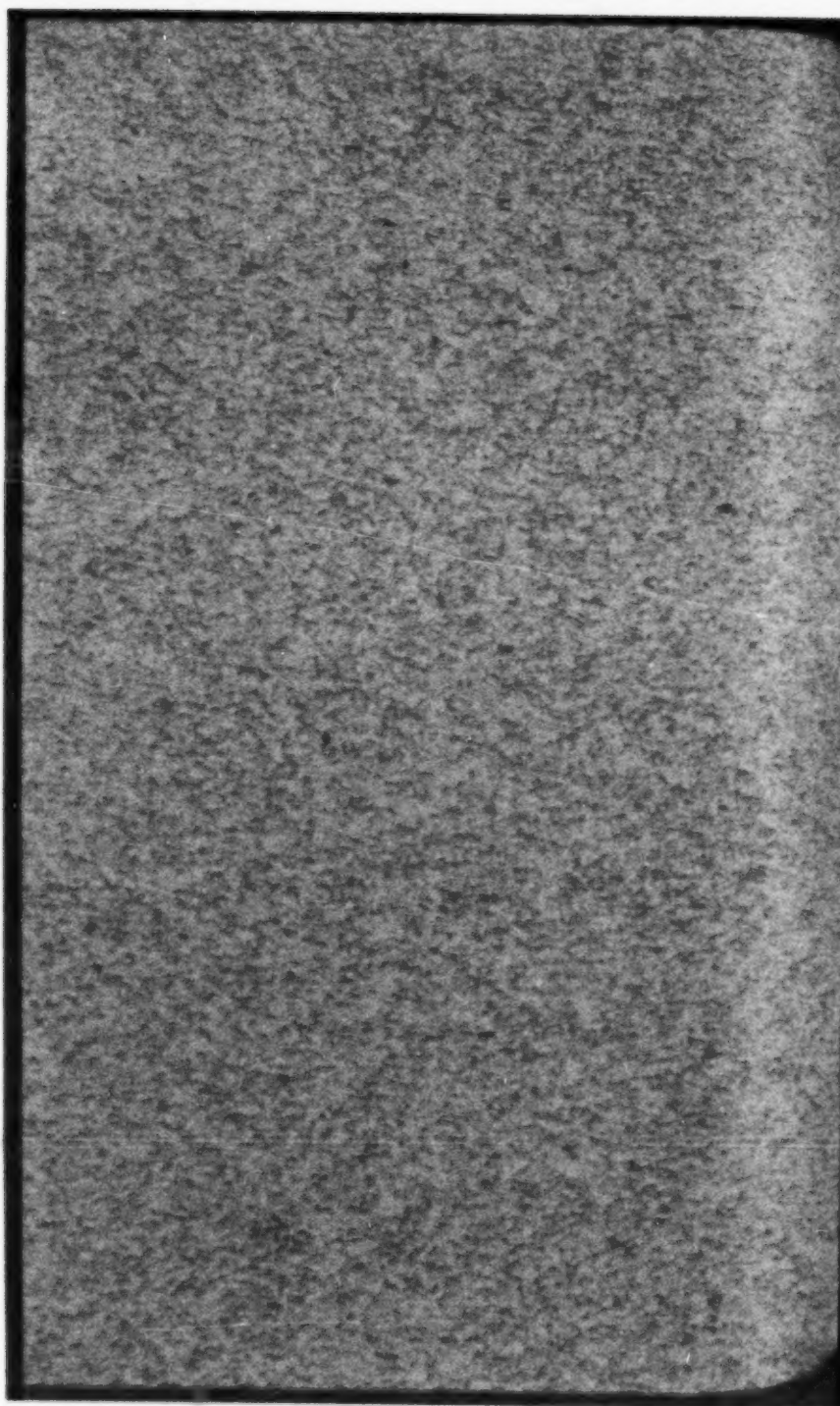
REPLY BRIEF FOR PLAINTIFF IN ERROR.

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# INDEX.

	Page.
Reply to	3
Argument of Plaintiff in Error that the Arkansas Statute is Not Repugnant to Section 10, Article I, of the Constitution of the United States	3
Argument of Defendant in Error that Statute Antedates the Time When Plaintiff in Error Entered the State to do Business	5
Argument of Plaintiff in Error that the Arkansas Statute Does Not Contravene the Equal Protection Clause of the Federal Constitution	6
Authorities Cited by Defendant in Error Under Argument that Fourteenth Amendment is Not Concerned with Forums nor Forms of Procedure	8
Conclusion	8

## TABLE OF CASES CITED.

Baltimore & Ohio Rd. Co. v. Harris, 12 Wall. 65	7
Cargill Co. v. Minnesota, 180 U. S. 452	5
Cincinnati St. Ry. Co. v. Snell, 193 U. S. 30	8
Conn. Mutual Life Ins. Co. v. Spratley, 172 U. S. 602	5
Crawford & Moses' Digest Sec. 1826	5
Crawford & Moses' Digest Sec. 1829	5
Crawford & Moses' Digest Sec. 4161	4
Doyle v. Continental Ins. Co., 94 U. S. 535	7
Hanover Fire Ins. Co. v. Carr, 71 Law ed. 225	8
Minnesota v. Barber, 136 U. S. 313, 326	4
Missouri Pacific Ry. Co. v. Clarendon Boat Oar Co., 257 U. S. 533	6
Missouri, Ex rel. v. North, 271 U. S. 40	8
New York, Lake Erie & Western Rd. Co. v. Estill, et al, 147 U. S. 591	7
Old Wayne Life Ass'n. v. McDonough, 204 U. S. 8	6
Pennsylvania Fire Ins. Co. v. Gold Issue Mining Co., 243 U. S. 93	7
Prudential Ins. Co. v. Cheek, 259 U. S. 530, 544	5
Robert Mitchell Furniture Co. v. Selden Breck Constr. Co., 257 U. S. 213	6
St. L. S. W. Ry. Co. v. State of Arkansas, 235 U. S. 350, 362	4
Security Mutual Life Ins. Co. v. Prewitt, 202 U. S. 246	7
Simon v. Southern Ry. Co., 236 U. S. 115	7
Terral v. Burke Constr. Co., 257 U. S. 529	5, 7, 9, 10
Wagner et al. v. City of Covington, 251 U. S. 95, 102	4



IN THE  
Supreme Court of the United States

OCTOBER TERM, 1925.

No. 851.

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POWER MANUFACTURING COMPANY..... *Plaintiff in Error,*

v.

HARVEY SAUNDERS..... *Defendant in Error.*

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IN ERROR TO THE SUPREME COURT OF  
ARKANSAS.

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REPLY BRIEF FOR PLAINTIFF IN ERROR.

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It will probably be necessary to submit this case without oral argument. For that reason we desire to reply to some questions raised by the brief for defendant in error.

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ARGUMENT OF PLAINTIFF IN ERROR THAT THE  
ARKANSAS STATUTE IS NOT REPUGNANT TO  
SECTION 10, ARTICLE 1, OF THE CONSTITUTION  
OF THE UNITED STATES.

Defendant in error argues (page 8 of brief) that if plaintiff in error had been organized under the laws of Arkansas, suit would not necessarily have been brought in Arkansas County, but might have been brought in any county in which the plaintiff in error was situated, or had its principal office or place of business, or in which its chief officer resided, or in which it had a branch office or place of business. There are two answers to this statement: first, the motion to dismiss, filed by plaintiff in error (Tr. p. 4), the facts stated in which must be accepted as true, recites that the plaintiff in error "does not maintain or conduct an office or business in any other county in this State," and, second, that the venue in the suit against plaintiff in error, as a foreign corporation, was not limited to any of the counties named but was extended to all counties in the State, regardless of whether plaintiff in error was located therein, or had a branch office or place of business therein.

It is argued that under section 4161 of Crawford & Moses' Digest, plaintiff in error could have obtained an order of court for the attendance of its witnesses. This section provides that the court may "*at its discretion*" order the personal attendance of witnesses under some circumstances. The most that can be said of this statute is that, if plaintiff in error had been able to make a proper showing to the court, the court had authority to make an order for the attendance of witnesses. It is conceded that the presence of witnesses could not have been obtained as a matter of right as could have been done if the suit had been brought in Arkansas County.

It is argued that the distance between Stuttgart, the county seat of Arkansas County, and Benton, the county seat of Saline County, was not great and that all witnesses who knew anything about the case were present at the trial. These facts are not shown by the record. If the court is to indulge in presumptions of this character, there are many other presumptions which might be indulged in, such as the fact that there are counties in Arkansas where a corporation defendant can obtain a fair and impartial trial, and other counties where it is only necessary to state that the defendant is a corporation, especially a foreign corporation, and the juries will make appropriations for the benefit of plaintiffs regardless of law or facts. Certain it is that the defendant in error, plaintiff below, conceived it to be to his advantage, and to the disadvantage of the plaintiff in error, defendant below, to bring the suit in Saline County, else he would have brought it in Arkansas County which was more convenient to all parties on both sides.

The vice of the statute under consideration is that it permits the plaintiff in suits against foreign corporations to choose his county without let or hindrance, a privilege which the plaintiff does not have in suits against individuals and domestic corporations.

Further, the test in questions of this character is not limited to what has been done under the statute, but what may be done under its authority.

*Minnesota v. Barber*, 136 U. S. 313, 326.

*St. L. Sw. Ry. Co. v. State of Arkansas*, 235 U. S. 350, 362.

*Wagner et al. v. City of Covington*, 251 U. S. 95, 102.

**ARGUMENT OF DEFENDANT IN ERROR THAT  
STATUTE ANTEDATES THE TIME WHEN  
PLAINTIFF IN ERROR ENTERED THE STATE  
TO DO BUSINESS.**

It is argued that plaintiff in error, in compliance with section 1826, of Crawford & Moses' Digest, designated an agent upon whom process could be served and consented that service upon said agent should be valid service. This case does not involve a question of service but a question of venue. In other words, it is conceded that service upon the agent designated by plaintiff in error was proper, but that section 1829, Crawford & Moses' Digest, is unconstitutional, because it discriminated against plaintiff in error by extending the venue in suits against it to any county in the State. The plaintiff in error did not consent to submit to suit in any county in the State.

It is argued that section 1829 of Crawford & Moses' Digest was in force and effect when plaintiff in error entered the State to do business; that therefore plaintiff in error cannot complain of its provisions. This contention is without merit.

In *Cargill Co. v. Minnesota*, 180 U. S. 452, this court said (page 468) that "the acceptance of a license in whatever form will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute \* \* \* that are repugnant to the Constitution of the United States."

In *Terral v. Burke Construction Co.*, 257 U. S. 529, the corporation came into the State long after the enactment of the Act complained of, yet this court held that the corporation was not bound by the statute.

In *Prudential Insurance Co. v. Check*, 259 U. S. 530, 544, the court held:

"A foreign corporation does not, as intimated by the court below, waive any constitutional objection by coming in."

The case of *Conn. Mutual Life Insurance Co. v. Spratley*, 172 U. S. 602, cited by defendant in error (brief, page 12), involved solely the question of due process of law when service was had upon the agent designated by statute. It did not involve in any way the question of discrimination or of a denial of the equal protection of the law.

ARGUMENT OF PLAINTIFF IN ERROR THAT THE  
ARKANSAS STATUTE DOES NOT CONTRA-  
VENE THE EQUAL PROTECTION CLAUSE OF  
THE FEDERAL CONSTITUTION.

A number of cases are cited on this point. We think an examination will show that none of them is applicable to the question here at issue. We call attention to them in the order in which they are cited in brief of defendant in error.

*Missouri Pacific Railway Company v. Clarendon Boat Oar Co.*, 257 U. S. 533: This case involved solely the right of the State of Louisiana to provide for suit against foreign corporations upon causes of action arising in the State, without providing for such suit upon transitory actions arising outside the State.

The quotation from the opinion in the brief for defendant in error has sole reference to the question of service.

*Robert Mitchell Furniture Co. v. Selden Breck Construction Co.*, 257 U. S. 213, involved the right to sue a foreign corporation in Ohio upon a contract to be performed in another State. The court held that it should not construe appointment of an agent for service to extend to suits in respect of business transacted by the foreign corporation elsewhere. While a foreign corporation appointing an agent as required by statute may take the risk of the construction that will be put upon the statute and the scope of the agency by the State court, as stated in that part of the opinion quoted by defendant in error, yet there is nothing in the opinion indicating that such foreign corporation waives its right to invoke the equal protection clause of the Constitution.

*Old Wayne Life Association v. McDonough*, 204 U. S. 8, involved a judgment rendered in Pennsylvania against an Indiana corporation upon a contract executed in Indiana upon notice to the Insurance Commissioner. This court held that the statutes of Pennsylvania requiring an insurance company to appoint an agent upon whom service might be had, did not authorize suit against the company upon business transacted in another State.

The quotation from the opinion in the brief of defendant in error refers to assent to "valid terms." Conversely any assent to invalid terms would be void.

*Baltimore & Ohio Railroad Co. v. Harris*, 12 Wallace, 65. The court held that the Baltimore & Ohio Railroad Company, incorporated in the State of Maryland but extending its lines into Virginia and the District of Columbia, remained the same corporation and could be sued in the District of Columbia for injuries done in Virginia.

*Simon v. Southern Railway Company*, 236 U. S. 115: The court held that service under statute was not sufficient to give courts in Louisiana jurisdiction over the person of defendant for a cause of action arising in Alabama, and held a judgment based on such service void.

*Pennsylvania Fire Insurance Co. v. Gold Issue Mining Co.*, 243 U. S. 93: The Supreme Court of Missouri held that power of attorney executed by defendant, consenting that service of process upon superintendent should be deemed personal service, was sufficient to give courts of Missouri jurisdiction over actions involving contracts executed in other states. This court held that such construction did not deny defendant due process of law. No question of denial of equal protection of laws was involved. Neither was there involved question of waiver of constitutional rights.

*New York, Lake Erie & Western Railroad Company v. Estill et al.*, 147 U. S. 591: A statute of Missouri provided that suits against all nonresidents could be brought in any county in the State. There was no distinction between non-resident individual defendants and nonresident corporation defendants. The only question involved was whether defendant was to be treated as a resident or nonresident defendant. The question of denial of equal protection of laws by operation of statute was not discussed.

The last two cases, as well as a majority of other cases cited by defendant in error, were decided at a time when this court held that it would not inquire into the reasons of a State for excluding a foreign corporation from doing business within its borders, and prior to the decision in *Terral v. Burke Construction Company*, 257 U. S. 529, overruling the cases of *Doyle v. Continental Insurance Co.*, 94 U. S. 535 and *Security Mutual Life Insurance Company v. Prewitt*, 202 U. S. 246.

# AUTHORITIES CITED BY DEFENDANT IN ERROR UNDER ARGUMENT THAT FOURTEENTH AMENDMENT IS NOT CONCERNED WITH FORUMS NOR FORMS OF PROCEDURE.

Defendant in error cites the opinion in *Missouri Ex Rel. v. North*, 271 U. S. 40.

That opinion held as follows (p. 43) :

"A statute which places all physicians in a single class, and prescribes a uniform standard of professional attainment and conduct, as a condition of the practice of their profession, and a reasonable procedure applicable to them as a class to insure conformity to that standard, does not deny the equal protection of the laws within the meaning of the Fourteenth Amendment."

Conversely, a statute like the Arkansas statute, which does not prescribe a uniform standard but discriminates against one class of persons (and a foreign corporation is a person) in favor of another class (individuals and domestic corporations) is a denial of the equal protection of the laws.

*Cincinnati St. Ry. Co. v. Snell*, 193 U. S. 30: Involves statute of Ohio authorizing change of venue where one of the parties is a corporation having more than fifty stockholders and the opposite party makes affidavit, sustained by the affidavits of five credible persons, that he cannot obtain a fair and impartial trial. This statute was undoubtedly based upon the theory that a corporation having more than fifty stockholders might exercise an undue influence on the juries in the county.

## CONCLUSION.

Other points raised in the brief of defendant in error are fully answered in our original brief. But we desire again to call attention to the case of *Hanover Fire Ins. Co. v. Carr*, 71 Law Ed. 224. This case is cited in our original brief and is cited by defendant in error as supporting his contention that the State of Arkansas had the power to exclude plaintiff in error from doing business therein. The

case does not support that contention, but holds directly to the contrary. The opinion reads in part as follows (p. 227):

"But there is a very important qualification to this power of the State, the recognition and enforcement of which are shown in a number of decisions of recent years. That qualification is that the State may not exact as a condition of the corporation's engaging in business within its limits that its rights secured to it by the Constitution of the United States may be infringed. This is illustrated in respect to the breach of the commerce clause of the Constitution by the cases of *Sioux Remedy Co. v. Cope*, 235 U. S. 197, 203, 59 L. ed., 193, 197, 35 Sup. Ct. Rep. 57, and *Looney v. Crane Co.*, 245 U. S. 178, 188, 62 L. ed. 230, 235, 38 Sup. Ct. Rep. 85. It is illustrated in cases in which a provision of a State law revoking the license of a foreign corporation for exercising its constitutional right to remove suits brought against them from the State courts to the Federal courts has been held void (*Terral v. Burke Constr. Co.*, 257 U. S. 529, 66 L. ed. 352, 21 A. L. R. 186, 42 Sup. Ct. Rep. 188); in cases in which the State has vainly attempted to subject foreign corporations to a payment of a tax which is a tax not only on the property of the corporation in the State but also on its property without the State, in violation of the due process clause of the 14th Amendment (*Western U. Telg. Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; *St. Louis Cotton Compress Co. v. Arkansas*, 260 U. S. 346, 67 L. ed. 297, 43 Sup. Ct. Rep. 125); and finally, in cases of a class to which it is contended the present case belongs, where a tax or license law operates to deny to the foreign corporation the equal protection of the laws."

Further (p. 231):

"One argument urged against our conclusion is that the relation of a foreign insurance company to the State which permits it to do business within its limits is contractual and that, by coming into the State and engaging in business on the conditions imposed, it waives all constitutional restrictions and can not object to a condition or law regulating its obligations, even though, as a statute operating *in invitum*, it may be in

conflict with constitutional limitations. This argument cannot prevail, in view of the decisions of this court in well-considered cases. *Home Ins. Co. v. Morse*, 20 Wall. 445, 22 L. ed. 365; *Western U. Telg. Co. v. Kansas*, 216 U. S. 1, 54 L. ed. 355, 30 Sup. Ct. Rep. 190; *Terral v. Burke Constr. Co.*, 257 U. S. 529, 66 L. ed. 352, 21 A. L. R. 486, 42 Sup. Ct. Rep. 188; *Fidelity & D. Co. v. Tafoya*, 270 U. S. 426, 70 L. ed. (Adv. 379), 46 Sup. Ct. Rep. 331; *Frost v. Railroad Commission*, June 7, 1926 (\_\_\_\_ U. S. \_\_\_\_\_, 70 L. ed. (Adv. 682), 46 Sup. Ct. Rep. 605)."

Under this decision, if the statute of Arkansas which authorizes suits to be brought against plaintiff in error in any or all counties of the State, while such suits can only be brought against individuals, or domestic corporations, in the counties in which they can be found, or served with process, is a denial of the equal protection of the laws, it is immaterial that such statute was in effect when plaintiff in error entered the State, or even that plaintiff in error might by implication have been held to assent thereto.

Respectfully submitted,

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FILED

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W. R. STANLEY

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POWER MANUFACTURING COMPANY *Plaintiff in Error,*

v.

HARVEY SAUNDERS *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS

BRIEF FOR DEFENDANT IN ERROR

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# INDEX.

	Page
Statement .....	5
The Arkansas statute is not repugnant to Section 10, Article 1, of the Constitution of the United States.....	7
Statute antedates the time when plaintiff in error entered the State to do business.....	10
The Arkansas statute does not contravene the equal pro- tection clause of the Federal Constitution.....	12
Fourteenth Amendment is not concerned with forums nor forms of procedure.....	16
Power to exclude.....	17
Classification .....	20
Plaintiff in error is not in position to invoke the protec- tion of the 14th Amendment.....	23
Conclusions .....	26
Article 12, Section 11 of the Constitution of Arkansas.....	7
Section 1826, Crawford & Moses' Digest.....	7
Section 1827, Crawford & Moses' Digest.....	7
Section 1829, Crawford & Moses' Digest.....	7
Section 1152, Crawford & Moses' Digest.....	7
Section 1171, Crawford & Moses' Digest.....	7
Section 1176, Crawford & Moses' Digest.....	7
Section 4161, Crawford & Moses' Digest.....	9
Section 4208, Crawford & Moses' Digest.....	9

## TABLE OF CASES CITED.

Power Manufacturing Company v. Saunders, 169 Ark. 478 .....	6
Puget Sound Power & Light Company v. King County, 264 U. S. 22 (68 L. ed. 541).....	8-10
Terrace v. Thompson, 273 U. S. 197 (68 L. ed. 255).....	8-10
Alley v. Bowen-Merrill Company, 76 Ark. 4.....	10
State ex rel v. Earle W. Hodges, 114 Ark. 161.....	10

IV

TABLE OF CASES (Continued)

	Page
Kentucky Company v. Paramount Exchange, 262 U. S. 544	24
Roberts & Schaffer Company v. Louis L. Emmerson, Supreme Court Advance Opinions, May 1, 1926, (70 L. ed. 410)	25
Panama Railroad Company v. Johnson, 264 U. S. 375, (68 L. ed. 748)	26
Linder v. United States, 268 U. S. 5, (69 L. ed. 819)	26

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POWER MANUFACTURING COMPANY *Plaintiff in Error,*

v.

HARVEY SAUNDERS *Defendant in Error.*

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IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

---

BRIEF FOR DEFENDANT IN ERROR.

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STATEMENT.

The plaintiff in error, Power Manufacturing Company, is a corporation organized under the laws of the State of Ohio, and authorized to do business in the State of Arkansas. The defendant in error, Harvey Saunders, a citizen and resident of Ohio, filed suit against said company in the circuit court of Saline County, Arkansas, to recover damages for personal injuries received while he was in the employ of said company at Stuttgart, Arkansas County, Arkansas.

Plaintiff in error filed a motion to dismiss said suit on the ground that section 1829 of Crawford & Moses' Digest, giving jurisdiction to any of the courts of the State over a foreign corporation, is unconstitutional.

It was contended in the trial court that said section is in violation of the 14th Amendment to the Constitution of the United States, prohibiting a State from depriving any person within the State of his or her property without due process of law, or denying to any person within its jurisdiction the equal protection of the laws.

It was also contended in the trial court that said section violated certain sections of the Constitution of the State of Arkansas.

Said motion to dismiss was overruled. Upon a trial of the issues, judgment was rendered in favor of the defendant in error. Upon appeal to the Supreme Court of the State, said judgment was affirmed. *Power Manufacturing Company v. Saunders*, 169 Arkansas 478.

In the Supreme Court it was contended by plaintiff in error, for the first time, that said section was in violation of section 10, Article 1, of the Constitution of the United States. By reference to the motion to dismiss it will be seen that no such contention was made in the trial court.

## ARGUMENT AND BRIEF.

### THE ARKANSAS STATUTE IS NOT REPUGNANT TO SECTION 10, ARTICLE 1, OF THE CONSTITUTION OF THE UNITED STATES.

In order that it may do business in Arkansas, a foreign corporation is required to name an agent upon whom process may be served. Section 1826, Crawford & Moses' Digest.

Before authority is granted a foreign corporation to do business in the State, it must file with the Secretary of State a resolution, adopted by its board of directors, consenting that service of process upon any agent of such company in the State, or upon the Secretary of State, in any action brought or pending in the State, shall be valid service upon said company. Section 1827 Crawford & Moses' Digest.

Service of summons and other process upon the designated agent of a foreign corporation is, according to the statute, sufficient to give jurisdiction over such corporation to any of the courts of the State, whether the service was had upon said agent within the county where the suit is brought or is pending or not. Section 1829 Crawford & Moses' Digest.

Actions against a domestic corporation may be brought in any county in which it is situated or has its principal office or place of business, or in which its chief officer resides, or in which it has a branch office, or place of business. Sections 1152 and 1171 Crawford & Moses' Digest.

Actions against private individuals may be brought in any county in which the defendant, or any one of several defendants, resides, or is summoned. Section 1176, Crawford & Moses' Digest.

Plaintiff in error contends that it entered the State of Arkansas under the provisions of article 12, section 11 of the Constitution of Arkansas, which provides, as to foreign corporations, that "as to any contracts made or business done in this State, they shall be subject to the same regulations, limitations and liabilities as like corporations of this State." It is contended that section 1829 of Crawford & Moses' Digest violates this section of the Arkansas Con-

stitution, since, by sections 1171 and 1152 of Crawford & Moses' Digest, a domestic corporation can be sued only in a county in which it is situated or has its principal office or place of business, or in which its chief officer resides, or in which it has a branch office or place of business. That section 1829 is not in violation of this section of the Constitution of Arkansas has been decided by the Arkansas Supreme Court in the case at bar and in other cases.

Whether the statute does violate this section of the Arkansas Constitution is a closed question. It has been many times held by this court that the decision of the highest court of a State as to the validity of a statute, under the State Constitution, is conclusive. *Puget Sound Power & Light Company v. King County*, 264 U. S. 22 (68 L. Ed. 541); *Terrace v. Thompson*, 273 U. S. 197 (68 L. Ed. 255).

It is said that if the Power Manufacturing Company had been organized under the laws of Arkansas this suit necessarily would have been brought in Arkansas County. Not necessarily so; it might have been brought in some other county in which its chief officer resided, or in which it had a branch office or place of business. It is said that if defendant in error had received an injury while employed by an individual or domestic corporation in Arkansas County, he would have been required to bring suit in that county. Not necessarily so; as has already been stated, the corporation might have been sued in any county in which it was situated or had its principal office or place of business, or in which its chief officer resided, or in which it had a branch office or place of business. The private individual might have, under such circumstances, been sued in any county in which he may have resided or in which he was summoned.

It is said by plaintiff in error that because the defendant was a corporation organized under the laws of another State, "defendant in error was allowed to pick any one of 75 counties, and did select a county remote from the scene of the alleged accident, where the court did not have jurisdiction of the witnesses and where, for some reason, possibly the influence of his friends or his counsel or political conditions, he thought his chances for obtaining a verdict were better than they were in Arkansas county." It is further said that because of section 4161 of Crawford & Moses' Digest, which provides that a witness shall not be obliged to attend the trial of a civil action except in the county of

his residence or an adjoining county, "plaintiff in error was required to go to trial without the presence of witnesses, except such as agreed voluntarily to attend."

In reply to these statements we desire to say that the distance between Stuttgart, the county seat of Arkansas County, and Benton, the county seat of Saline County, where the case was tried, is 60 miles by direct line, and there is a good highway between. While the distance between the two county seats is slightly greater than 60 miles by the highway, it is not more than 2½ hours drive from the one place to the other. Plaintiff in error was not required to go to trial without its witnesses. Counsel knows that all witnesses that knew anything about the case, were present at the trial. Plaintiff in error was entitled to compulsory process to obtain the presence of witnesses. It might have taken the deposition of any witness. Section 4161 of Crawford & Moses' Digest is not the only section of the statutes of Arkansas relative to the attendance of witnesses, section 4208 being as follows:

*"When personal attendance compelled. Where it is made to appear, by the affidavit of the party and the written statement of his attorney, that the testimony of a witness is important, and that the just and proper effect of his testimony cannot, in a reasonable degree, be obtained without an oral examination before the jury, the court may, at its discretion, order the personal attendance of the witness to be compelled, although such witness may otherwise be exempt from personal attendance by law."*

If there was any witness whose presence at the trial plaintiff in error desired, and who refused to attend, why did it not take advantage of this statute? The court would have granted compulsory process for any material witness upon application. Since plaintiff in error did not ask the court for an order requiring the attendance of any witness, it will be assumed that there was no witness whose presence plaintiff in error desired, except those who were present.

It is contended by plaintiff in error that section 1829 of the Digest as enforced by the courts of Arkansas imposes different regulations and greater limitations and liabilities upon corporations organized under the laws of other States than are imposed upon corporations organized under the laws of Arkansas, and therefore that this section is in

violation of article 12, section 11, of the Constitution of Arkansas. The Arkansas Supreme Court has decided contrary to this contention, and its decision is conclusive. *Puget Sound Power & Light Company v. King County, supra*; *Terrace v. Thompson, supra*.

It is claimed not only that this section of the statute contravenes the Arkansas Constitution but, by reason of such fact, that it contravenes the contract clause, section 10, article 1, of the Federal Constitution. Since this court is bound by the construction placed upon the statute by the Arkansas Supreme Court, and since that court has held that the statute does not contravene the Arkansas Constitution, it seems that it must be held by this court that it does not contravene the contract clause of the Federal Constitution.

Counsel for plaintiff in error urge that the statute discriminates against foreign corporations, but counsel fail to observe the language of our Constitution, wherein it declares that foreign corporations shall be subject to the same regulations, limitations and liabilities as like corporations of this state, *only as to contracts made or business done*.

The Arkansas Supreme Court has held that the enactment of a law prescribing regulations for instituting suits is not inhibited by our Constitution, since the institution of a suit is neither the making of a contract nor the doing of business. *Alley v. Bowen-Merrill Company*, 76 Ark. 4; *State ex rel v. Earle W. Hodges*, 114 Ark. 161.

#### **STATUTE ANTEDATES THE TIME WHEN PLAINTIFF IN ERROR ENTERED THE STATE TO DO BUSINESS.**

If article 12, section 11, of the Constitution of Arkansas, which was in force at the time plaintiff in error entered the State to do business, constitutes a contract between plaintiff in error and the State of Arkansas, then it is the contention of defendant in error that this contract is not impaired by section 1829 of Crawford & Moses' Digest, within the meaning of the contract clause of the Federal Constitution.

Section 1829 of Crawford & Moses' Digest was in force and effect when plaintiff in error entered the state to do business, likewise sections 1826 and 1827. Plaintiff in

error complied with the provisions of these statutes. A resolution was passed by its board of directors consenting that service of process upon any agent of the company within the State, in any action brought or pending in the State, should be valid service. It designated an agent in compliance with section 1826 of the statute. If the section of the Arkansas Constitution referred to constitutes a contract between plaintiff in error and the State, it certainly did not become such until the plaintiff in error entered the State to do business. It is the settled doctrine of this court that the contract clause of the Federal Constitution applies only to legislation subsequent in time to the contract alleged to have been impaired. The obligations of a contract cannot be impaired, within the meaning of the United States Constitution, article 1, section 10, by a statute in force when the contract was made. *Cross Lake Shooting and Fishing Club v. Louisiana*, 224 U. S. 632, 639, 56 L. Ed. 924; *C. B. Munday v. Wisconsin Trust Company*, 252 U. S. 499, 64 L. Ed. 684; *Lehigh Water Company v. Easton*, 121 U. S. 388, 30 L. Ed. 1059; *Pinney v. Nelson*, 183 U. S. 144, 46 L. Ed. 125; *Chicago & Alton Railroad Company v. William J. McWhirt*, 243 U. S. 422, 61 L. Ed. 826; *Bacon et al v. State of Texas*, 163 U. S. 207, 41 L. Ed. 132.

It will be seen, on referring to the case cited in the brief of plaintiff in error, that the statutes condemned as contravening the contract clause of the Federal Constitution were all passed subsequent to the time when the corporation entered the State to do business, that is, subsequent to the time when the contract was entered into between the State and the foreign corporation, by which such corporation was to be subjected to all the liabilities, etc., of a domestic one of like character. For instance, in the case of *American Smelting Company v. Colorado*, 204 U. S. 103, 51 L. Ed. 393, the statute in question was passed some three years after the smelting company had entered the State of Colorado to do business. This was a tax case, and this court held that the statute, passed subsequent to the time the corporation entered the State to do business, impaired the obligations of the corporation's contract which it had with the State at the time it entered the State to do business.

Since section 1829 Crawford & Moses' Digest was in force and effect at the time plaintiff in error entered the State of Arkansas to do business, and since, by a resolution of its board of directors, it designated an agent, and agreed that service upon such agent should be valid service

in any action brought or pending in the State, it is clear that the statute in question does not impair the obligation of any contract within the meaning of the contract clause of the Federal Constitution.

In the case of *Conn. Mutual Life Insurance Company v. Spartley*, 172 U. S. 602, 43 L. Ed. 569, in passing on a statute governing the service of process on foreign corporations, this court said:

"When the Legislature of Tennessee, therefore, permitted the company to do business within its State, on appointing an agent therein upon whom process might be served, and when, in pursuance of such provisions, the company entered the State and appointed an agent, no contract was thereby created which would prevent the State from thereafter passing another statute in regard to service of process, and making such statute applicable to a company already doing business in the State. In other words, no contract was created by the fact that the company availed itself of the permission to do business within the State under the provisions of the Act of 1875."

#### THE ARKANSAS STATUTE DOES NOT CONTRAVENE THE EQUAL PROTECTION CLAUSE OF THE FEDERAL CONSTITUTION.

In the case of *Missouri-Pacific Railway Company v. Clarendon Boat Oar Company*, 257 U. S. 533, 66 L. Ed., 354, Chief Justice Taft, speaking for the court, said:

"Provision for making foreign corporations subject to service in the State is a matter of legislative discretion."

In the case of *Robert Mitchell Furniture Company v. Selden Breck Construction Company*, 257 U. S. 213, 66 L. Ed. 201, the court said:

"The purpose in requiring the appointment of such an agent is primarily to secure local jurisdiction in respect of business transacted within the State. Of course, when a foreign corporation appoints one as required by statute it takes the risk of the construction that will be put upon the statute and the scope of the agency by the State court."

In the case of *Old Wayne Mutual Life Association v. McDonough*, 204 U. S. 22, 51 L. Ed. 345, speaking of a statute of Pennsylvania requiring an insurance company to appoint an agent upon whom service might be had, the court said:

"Undoubtedly, it was competent for Pennsylvania to declare that no insurance corporation should transact business within its limits without filing the written stipulation specified in its statute. It is equally true that if an insurance corporation of another State transacts business in Pennsylvania without complying with its provisions, it will be deemed to have assented to any valid terms prescribed by the commonwealth as a condition of its right to do business there; and it will be estopped to say that it had not done what it should have done in order that it might lawfully enter that commonwealth and there assert its corporate powers."

In *Baltimore & Ohio Railroad Company v. Harris*, 12 Wall. 65, 20 L. Ed. 354, the question was as to the jurisdiction of the Supreme Court of the District of Columbia of a suit against a corporation in Maryland, whose railroad entered the District with the consent of Congress. This court said:

"It (the corporation) cannot migrate, but may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there. If it do business there it will be presumed to have assented and will be bound accordingly."

In the case of *Simon v. Southern Railway Company*, 236 U. S. 115, 59 L. Ed. 492, this court said:

"Subject to exceptions, not material here, every State has the undoubted right to provide for service of process upon any foreign corporations doing business therein; to require such companies to name agents upon whom service may be had; and also to provide that in case of the company's failure to appoint such agent, service, in proper cases, may be had upon an officer designated by law."

In the case of *Pennsylvania Fire Insurance Company v. Gold Issue Min. & M. Company*, 243 U. S. 93, 61 L. Ed 610, in passing upon the validity of a statute of the State

of Missouri which required foreign insurance corporations to file with the Insurance Commissioner a power of attorney consenting that service of process upon that official should be deemed personal service, this court said:

"The insurance company set up that such service was insufficient except in suits upon Missouri contracts, and that if the statute were construed to govern the present case, it encountered the 14th Amendment by denying to the defendant due process of law. The Supreme Court of Missouri held that the statute applied and was consistent with the Constitution of the United States.

"The construction of the Missouri statute thus adopted hardly leaves a constitutional question open. The defendant had executed a power of attorney that made service on the superintendent the equivalent of personal service. If by a corporate vote it had accepted service in this specific case there would be no doubt of the jurisdiction of the State court over a transitory action of contract. If it had appointed an agent authorized in terms to receive service in such cases, there would be equally little doubt. It did appoint an agent in language that rationally might be held to go to that length. The language has been held to go to that length, and the construction did not deprive the defendant of due process of law, even if it took the defendant by surprise, which we have no warrant to assert."

By the above cases it is seen that with reference to a State statute requiring foreign corporations to appoint an agent upon whom service may be had, and the giving of jurisdiction to the courts of the State upon such service, the Supreme Court of the United States has held that the decisions of the court of last resort of the State are controlling. In the case last above cited it was held that, by appointing the agent for service required by the statute, the foreign corporation defendant, consented to the jurisdiction of the court, and that to allow it to question the jurisdiction would permit it to set up its own wrong as a defense. It had executed the document required by the State statute designating an agent for service, and this court said:

"When a power actually is conferred by a document, the party executing it takes the risk of the inter-

pretation that may be put upon it by the courts. The execution was the defendant's voluntary act."

Ordinarily the statutory consent of a foreign corporation to be sued which arises because of compliance with a statute requiring it to designate an agent, does not extend to causes of action arising in other states. *Simon v. Southern Railway Company*, *supra*. But, as in the case of *Pennsylvania Fire Insurance Company v. Gold Issue Min. & M. Company*, *supra* where the court of last resort of a State has held that the effect of such a statute is to give jurisdiction to the courts of the State of causes of action arising in other States, the rule is otherwise.

Since the Supreme Court of Arkansas has held that service of process upon the designated agent of a foreign corporation is sufficient to give jurisdiction to any of the courts of the State, regardless of the fact that the corporation may have its place of business in a county other than that in which the suit is brought, we are confident that such will be the holding of this court.

In the case of *New York, Lake Erie and Western Railroad Company v. Wallace Estill et al.*, 147 U. S. 391, 37 L. Ed. 292, this court held that a statute of the State of Missouri authorizing the maintenance of suits against foreign corporations in any county of the State is a valid statute. In this case it was contended by plaintiff in error that it could only be sued in the city of St. Louis, since that was the only place in which it maintained an office or had a place of business, or where any of its officers, agents or employees resided. In upholding the validity of this statute, this court said:

"We are of the opinion that under the statutes of Missouri the circuit court of Saline County had jurisdiction of the present suits, although the agent and business office of the defendant were in St. Louis, and not in Saline County; that the service in St. Louis of the summons issued by the circuit court of Saline County was valid; and that the defendant was within the provisions of the Missouri statute which made non-residents suable in any county of the State.

"The principle applicable under such circumstances is that, if the corporation does business in the State, it will be presumed to have assented to the statute, and will be bound accordingly.

"This court will adopt the construction placed upon the statutes of Missouri by the courts of that State."

**FOURTEENTH AMENDMENT IS NOT CONCERNED  
WITH FORUMS NOR FORMS OF PROCEDURE.**

In a recent case the Supreme Court of Missouri held that, in proceedings for the revocation of a physician's license, the physician was entitled to take testimony on deposition, as provided by the statute, but not to subpoena witnesses to appear before the board. The physician whose license was revoked assigned as error this holding of the court, contending that such was a denial of due process of law and of the equal protection of the laws under the 14th Amendment.

In passing upon this assignment of error the Supreme Court of the United States held:

"It has been so often pointed out in the opinions of this court that the 14th Amendment is concerned with the substance and not with the forms of procedure, as to make unnecessary any extended discussion of the question here presented. The due process clause does not guarantee to a citizen of a State any particular form or method of State procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceedings and the character of the rights which may be affected by it." *State v. Emmett P. North*, (April 12, 1926), 70 L. Ed. 406, U. S. Supreme Court Advance Opinions, May 1, 1926. Also see cases cited in the opinion.

In the case of *Cincinnati Street Railway Company v. Snell*, 193 U. S. 30, 48 L. Ed. 604, this court, in holding that it is fundamental rights which the 14th Amendment safeguards and not the mere forum which a State may deem proper to designate for the enforcement and protection of such rights, said:

"The proposition to which the case reduces itself is therefore this: That although the protection of equal laws equally administered has been enjoyed, nevertheless there has been a denial of the equal protection of the law within the purview of the 14th Amendment, only because the State has allowed one person to seek one forum and has not allowed another person, asserted to be in the same class, to seek the

same forum, although as to both persons the law has afforded a forum in which the same and equal laws are applicable and administered. But it is fundamental rights which the 14th Amendment safeguards, and not the mere forum which a State may see proper to designate for the enforcement and protection of such rights. Given, therefore, a condition where fundamental rights are thus protected and preserved, it is impossible to say that the rights which are thus protected and preserved have been denied because the State has deemed best to provide for a trial in one forum or another. It is not, under any view, the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the State has provided equal laws prevail.

"It follows that the mere direction of the State law that a cause, under given circumstances, shall be tried in one forum instead of another, or may be transferred when brought from one forum to another, can have no tendency to violate the guaranty of the equal protection of the laws where in both the forums equality of law governs an equality of administration prevails."

The above statement of law is borne out by the reasoning of the court in the case of *National Surety Company v. Architectural Decorating Company*, 266 U. S. 276, 57 L. Ed. 221; also *Bernheimer v. Converse*, 206 U. S. 284, 51 L. Ed. 1163.

### POWER TO EXCLUDE.

Foreign corporations cannot do business in a State except by the consent of the State. The State may exclude them arbitrarily or impose such conditions as it will upon their engaging in business within its jurisdiction. *Fidelity & Deposit Company of Maryland v. Ed. C. Tafaia*. Supreme Court Advance Opinions (Mch. 15, 1926) 70 L. Ed. 379. It has been held by this court, however, that the power to exclude is qualified, in that a State cannot exact as a condition of the corporation's engaging in business within its limits that its rights secured to it by the Constitution of the United States may be infringed. For instance, it has been held that the power of a State to exclude a foreign

corporation cannot be used to prevent it from resorting to a Federal court. *Terrall v. Burke Construction Company*, 257 U. S. 529, 66 L. Ed. 352. Nor can the power to exclude be used to tax a foreign corporation upon property that, by established principles, the State has no power to tax. *Western Union Telegraph Company v. Kansas*, 216 U. S. 1, 54 L. Ed. 355. Nor can the power to exclude be used so as to interfere with interstate commerce. *Sioux Remedy Company v. Cope*, 235 U. S. 197, 59 L. Ed. 193. Nor can the power to exclude be used to regulate the conduct of a foreign railroad corporation in another jurisdiction, even though the company has tracks and does business in the State making the attempt. *New York, L. E. and Western Railroad Company v. Pennsylvania*, 153 U. S. 628, 38 L. Ed. 846.

However, so far as we are aware, it has never been held that the right of a State to exclude a foreign corporation cannot be used to compel such corporation, when it enters the State for the purpose of doing business, to submit to suit in any of the courts of the State, which the State, in its discretion, may see proper to designate.

In the recent case of *Hanover Fire Insurance Company v. Carr*, Supreme Court Advance Opinions (December 15, 1926) 71 L. Ed. 224, Chief Justice Taft, speaking for the court, said:

"In subjecting a law of the State which imposes a charge upon foreign corporations to the test whether such a charge violates the equal protection clause of the 14th Amendment, a line has to be drawn between the burden imposed by the State for the license or privilege to do business in the State and the tax burden which, having secured the right to do business, the foreign corporation must share with all the corporations and other taxpayers of the State. With respect to the admission fee, so to speak, which the foreign corporation must pay to become a *quasi* citizen of the State and entitled to equal privileges with citizens of the State, the measure of the burden is in the discretion of the State, and any inequality as between the foreign corporation and the domestic corporation in that regard does not come within the inhibition of the 14th Amendment; but after its admission, the foreign corporation stands equal and is to be classified with domestic corporations of the same kind."

It will be seen from the above case that the measure of the burden imposed by a State upon a foreign corporation, for the privilege of doing business in the State, is in the discretion of the State, and any inequality as between the foreign corporation and the domestic corporation in that regard does not come within the inhibition of the 14th Amendment.

In the last above case it was further said:

"The State in dealing with foreign corporations may properly and without discrimination as between them and domestic companies regulate the former by a provision that, for a failure by them to comply with any valid law governing the conduct of their business in the State, the license already granted may be revoked. That is a legitimate condition in the treatment of foreign companies which do not have property and home within the State."

Sections 1826, 1827 and 1829 of Crawford & Moses' Digest prescribe conditions upon which a foreign corporation may be permitted to do business in Arkansas, and it may be said that it was within the discretion of the State to impose such conditions.

In the case of *Wilson v. Seligman*, 144 U. S. 41, 36 L. Ed. 338, this court said:

"It may be admitted that any State may by its laws require, as a condition precedent to the right of a corporation to be organized, or to transact business, within its territory, that it shall appoint an agent there on whom process may be served; or even that every stockholder in the corporation shall appoint an agent upon whom, or designate a domicile at which, service may be made within the State, and that, upon his failure to make such appointment or designation, the service may be made upon a certain public officer, and that judgment rendered against the corporation after such service shall bind the stockholders, whether within or without the State. In such cases, the service is held binding because the corporation, or the stockholders, or both, as the case may be, must be taken to have consented that such service within the State shall be sufficient and binding; and no individual is bound by the proceedings who is not a stockholder."

Speaking of statutory provisions requiring foreign corporations, desiring to engage in business within the State, to file a certificate appointing or designating an agent upon whom service may be had, we find the following in 12 R. C. L. 58:

"The constitutionality of these various statutes prescribing the mode of service of process on a foreign corporation doing business in a State has been frequently challenged on the ground that they deprive the foreign corporation of its liberty and property without due process of law, as well as deny to it the equal protection of the laws, but they have been invariably sustained as necessary corollaries of the State's general power to admit conditionally or to exclude altogether such corporations from its borders, even when they exact an annual fee for the services of a designated officer as attorney."

#### CLASSIFICATION.

It seems that the Arkansas statute should be upheld on the ground of reasonable classification. In the case of *St. Mary's Franco-American Petroleum Company v. State of West Virginia*, 203 U. S. 183, 51 L. Ed. 144, the validity of a statute providing for service on foreign corporations and nonresident domestic corporations having their places of business and works outside of the State, was brought in question. The statute required such corporations, by power of attorney duly executed, acknowledged and filed in the office of the Auditor for the State of West Virginia, to appoint said Auditor and his successors in office attorney in fact to accept service of process, and by the same instrument to declare its consent that service of any process or notice on said attorney in fact or his acceptance thereof indorsed thereon, shall be equivalent for all purposes to and shall be and constitute due and legal service. In upholding the validity of this statute, Chief Justice Fuller, speaking for the court, said:

"It is argued that the act of February 22, 1905, is invalid under the 14th Amendment, in that it deprives the company of liberty of contract and property without due process of law, and denies it the equal protection of the laws. But, in view of repeated decisions of this court, the contention is without merit. The State

had the clear right to regulate its own creations, and, *a fortiori*, foreign corporations permitted to transact business within its borders.

"In this instance it put all nonresident domestic corporations, which elected to have their places of business and works outside of the State, and all foreign corporations coming into the State, on the same footing in respect of the service of process, and the law operated on all these alike.

"Such a classification was reasonable, and not open to constitutional objection."

In the case of *Crescent Oil Company v. Mississippi*, 257 U. S. 129, 66 L. Ed. 166, this court said.

"Where, as we have found in this case, a foreign corporation has no Federal right to continue to do business in a State, and where, as here, no contract right is involved, and there is no employment by the Federal government, it is the settled law that a State may impose conditions, in its discretion, upon the right of such corporation to do business within the State, even to the extent of excluding it altogether. *Hern Silver Min. Co. v. New York*, 143 U. S. 305, 36 L. Ed. 164; *Baltic Min. Co. v. Massachusetts*, 231 U. S. 68, 83, 58 L. Ed. 127, and cases cited. And in such case the inherent difference between corporations and natural persons is sufficient to sustain a classification making restrictions applicable to corporations only."

Citing *Hammond Packing Co. v. Arkansas*, 212 U. S. 322, 343, 344, 53 L. Ed. 530, 541, 542; *Baltic Min. Co. v. Massachusetts*, *supra*. And *Ft. Smith Lumber Co. v. Arkansas*, 251 U. S. 532, 533, 64 L. Ed. 396, 398; *American Sugar Ref. Co. v. Louisiana*, 179 U. S. 89, 45 L. Ed. 102; *Williams v. Fears*, 179 U. S. 270, 276, 45 L. Ed. 186, 189; *W. W. Cargill Co. v. Minnesota*, 180 U. S. 452, 45 L. Ed. 619.

In the case of *Stebbins v. Riley*, 268 U. S. 137, 69 L. Ed. 884, this court said:

"The guaranty of the 14th Amendment of the equal protection of the laws is not a guaranty of equality of operation or application of State legislation upon all citizens of a State. \* \* \* In other words, the State may distinguish, select, and classify

objects of legislation, and necessarily this power must have a wide range of discretion."

In the case of *Haavik v. Alaska Packers Association*, 263 U. S. 510, 68 L. Ed. 414, an act of the Alaska Legislature, which imposed an annual license tax of \$5 upon each nonresident fisherman, was brought into question as contravening the equal protection clause of the Constitution, since the act did not apply to residents. Speaking of this classification, this court said:

"This is not wholly arbitrary or unreasonable, and we find nothing in the Constitution which prohibits Congress from favoring those who have acquired a local residence and upon whose efforts the future development of the territory must largely depend." Citing *Alaska Pacific Fisheries v. United States*, 248 U. S. 78, 87, 63 L. Ed. 138; and *Alaska Fish Salting & By-Products Co. v. Smith*, 255 U. S. 44, 47, 48, 65 L. Ed. 489, 494, 495.

In the case of *Radice v. New York*, 264 U. S. 292, 68 L. Ed. 690, construing the equal protection clause of the 14th Amendment as applicable to the facts of that case, this court said:

"The mere production of inequality is not enough. Every selection of persons for regulation so results, in some degree. The inequality produced, in order to encounter the challenge of the Constitution, must be actually and palpably unreasonable and arbitrary." Citing *Arkansas Natural Gas Company v. Railroad Commission*, 261 U. S. 279, 67 L. Ed. 705.

In the recent case of *Hanover Fire Insurance Company v. Carr*, supra, this court said:

"The State in dealing with foreign corporations may properly and without discrimination as between them and domestic companies regulate the former by a provision that for a failure by them to comply with any valid law governing the conduct of their business in the State the license already granted may be revoked. That is a legitimate condition in the treatment of foreign companies which do not have property and home within the State. It is a police regulation."

**PLAINTIFF IN ERROR IS NOT IN POSITION TO  
INVOKE THE PROTECTION OF THE 14TH  
AMENDMENT.**

The plaintiff in error applied to the State of Arkansas for a license to do business within the State. It filed with the Secretary of State a resolution adopted by its board of directors consenting that service of process upon any agent of the company in the State or upon the Secretary of State, in any action brought or pending in the State, shall be valid service. It designated an agent, as required by section 1826. Section 1829 provides that service of process upon the agent designated under the provisions of section 1826 shall give jurisdiction to any of the courts of the State. After complying with these sections of the statute it was given a license to do business and entered the State for that purpose. It carried on its business in the State and reaped the profits incident thereto.

In the case of *Buck v. Kuykendall*, 267 U. S. 307, 69 L. Ed. 623, this court said:

"One cannot in the same proceeding both assail a statute and rely upon it. Nor can one who avails himself of the benefits conferred by a statute deny its validity."

Plaintiff in error has availed itself of the benefits conferred by the statute of Arkansas which it now assails. It is therefore in no position to deny its validity. In the last above case it was held that one was not estopped from seeking relief against the provisions of a statute merely because he applied to the State officials for a certificate of public convenience, but in this case the certificate was never issued. He received no benefit and therefore was not estopped. In dealing with this phase of the case this court said:

"But in the case at bar Buck does not rely upon any provision of the statute assailed; and he received no benefit under it. He was willing, if permitted to use the highways, to comply with all the laws relating to common carriers. But the permission sought was denied. The case presents no element of estoppel."

In the case of *Pierce Oil Corporation v. Phoenix Refining Company*, 259 U. S. 125, 66 L. Ed. 855, the oil corporation questioned the validity of a statute of the State of Oklahoma which governed the acceptance and transporta-

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tion of crude petroleum through pipe lines in that State and declaring every corporation so engaged a common carrier. It was claimed that this statute violated the 5th and 14th Amendments to the Constitution of the United States. In this case Mr. Justice Clark, speaking for the court, said:

This Constitution and these laws had been in effect for five years when the Pierce Company, by applying for and obtaining the privilege of conducting its business operations within the State, elected to respect and obey them. \* \* \* When the large discretion which the State had to impose terms upon this foreign corporation as a condition of permitting it to engage in wholly intrastate business, is considered, the contention that this order of a tribunal to the jurisdiction of which the company voluntarily submitted itself, made after notice and upon full hearing, deprives it of its property without due process of law, must be pronounced futile to the point almost of being frivolous. *By accepting the privilege it voluntarily consented to be bound by the conditions attached to it, and while enjoying the benefits of that privilege it will not be heard to complain that an order, plainly within the scope of statutes in effect when it entered the State, is unconstitutional.*"

The case of *Kentucky Company v. Paramount Exchange*, 262 U. S. 544, cited by plaintiff in error, we believe is not an analogous case. In that case a Kentucky corporation went into a State court in the State of Wisconsin and filed a replevin suit for the purpose of recovering its property. The corporation had not been admitted to do business in the State of Wisconsin on certain conditions such as in the case at bar. When a State grants a foreign corporation a privilege, such as permitting it to come into the State for the purpose of doing business, its classification of such corporation for more onerous duties than are required of domestic corporations, is not, in our judgment, arbitrary.

There is another reason why the plaintiff in error is not in a position to invoke the protection of the 14th Amendment. It cannot invoke the protection of this amendment merely by showing that it is a foreign corporation. It cannot rely on theoretical inequalities, or such as do not affect it, but must show that it personally is affected unfav-

orably by the discrimination of which it complains. Counsel argue that it could not have its witnesses present at the trial except such as were voluntarily present. It does not show that any witness was absent by reason of the fact that the suit was filed in Saline County instead of Arkansas County, and if it had made such showing the fault would have been entirely its own, since it had the right to petition the court for compulsory process for its witnesses, and failed to do so. The fact is that every witness was present who knew anything about the case. The case was one for personal injury alleged to have been caused by the falling of a large iron wheel on the leg of defendant in error. Only two persons saw it, they being fellow-servants. They were both present and testified. It is alleged that the injury occurred because of their negligence in permitting the wheel to fall, and because of a defect in the floor of the warehouse where the injury occurred. We repeat that everybody that seemed to know anything about the case, either as to the negligence of the fellow-servants or as to the defect in the floor, were present and testified as witnesses, and plaintiff in error makes no showing whatever that any witness was absent, and we further repeat that if it had done so it is in no position to take advantage of such a contention, since it did not exhaust its remedies provided under the statutes of Arkansas to obtain presence of its witnesses. In the case of *Roberts & Schaffer Company v. Louis L. Emmerson*, Supreme Court Advance Opinions, May 1, 1926, p. 410 (70 L. Ed. 410) this court said:

"But the plaintiff is not in a position to raise this question. As this court has often held, one who challenges the validity of State taxation on the ground that it violates the equal protection clause, cannot rely on theoretical inequalities, or such as do not affect him, but must show that he is himself affected unfavorably by the discrimination of which he complains." See *Western U. Teleg. Co. v. Atty. Gen.*, 125 U. S. 530, 552, 553, 31 L. ed. 790; *Gast Realty & Invest. Co. v. Schneider Granite Co.*, 240 U. S. 55, 60, 61 L. ed. 523, 526; *Withnell v. Ruecking Construction Co.*, 249 U. S. 63, 63 L. ed. 479; *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113, 121, 65 L. ed. 165.

## WHEN POSSIBLE, A STATUTE MUST BE CON- STRUED TO BE CONSTITUTIONAL.

This court has often held that, when possible, a statute must be construed to be constitutional, and so as to avoid grave doubts as to its constitutionality.

"A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score." *Panama Railroad Company v. Johnson*, 264 U. S. 375, 68 L. ed. 748; *Linder v. United States*, 268 U. S. 5, 69 L. Ed. 819.

## CONCLUSIONS.

Summing up the argume *à* herein presented we may say:

1. If article 12, section 11, of the Constitution of Arkansas could be said to be a contract between plaintiff in error and the State, this contract is not violated by reason of the fact that plaintiff in error was brought into the court of Saline County instead of Arkansas County. The Arkansas Supreme Court has so decided, and its decision is conclusive.

2. If the section of the Arkansas Constitution referred to could be said to be a contract between the State and the plaintiff in error, it can be held to be such *only as to contracts made and business done*, for such is the plain wording of this section. The enactment of a law prescribing regulations for instituting suits is not inhibited by this section of the Constitution, since the institution of a suit is neither the making of a contract nor the doing of business. It has been so held by the Arkansas Supreme Court.

3. The statutes of Arkansas provide for the compulsory attendance of witnesses, no matter in what county the suit is brought. Plaintiff in error did not avail itself of this provision of the statutes and therefore is in no position to complain. All its witnesses were present at the trial.

4. Section 1829 of Crawford & Moses' Digest was in force and effect at the time plaintiff in error entered the State to do business. The obligation of a contract cannot be impaired within the meaning of the United States Constitution, article 1, section 10, by a statute in force when the contract was made.

5. Provisions for making foreign corporations subject to service in the State is a matter of legislative discretion. With reference to a statute requiring foreign corporations to appoint an agent upon whom service may be had and giving jurisdiction to the courts of the State upon such service, the decisions of the court of last resort of the State are controlling. When a foreign corporation names an agent in accordance with such statutes and enters the State to do business, it takes the risk of the interpretation that may be put upon the statutes by the State courts.

6. The 14th Amendment is not concerned with mere forums nor forms of procedure.

7. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities; or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion.

8. The measure of the burden imposed by a State upon a foreign corporation, for the privilege of doing business in the State, is in the discretion of the State, and any inequality as between the foreign corporation and the domestic corporation in that regard does not come within the inhibition of the 14th Amendment.

9. When a State grants a foreign corporation a privilege, such as permitting it to enter the State for the purpose of doing business, its classification of such corporation for more onerous duties than are required of domestic corporations, is not arbitrary.

10. Plaintiff in error is in no position to invoke the protection of the 14th Amendment because it has availed

itself of the benefits which it has derived from compliance with the very statute which it now assails.

11. Plaintiff in error is in no position to invoke the protection of the 14th Amendment since it has not shown itself to have been unfavorably affected by reason of the fact that the suit was brought in Saline County instead of Arkansas County.

For the reasons given we submit that the judgment of the Arkansas Supreme Court should be affirmed.

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